Vol 317

No. 16700 ✓

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JEFFRIES BANKNOTE COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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FILED

APR 26 1960

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151 *et seq.*),[1] for enforcement of its order issued against respondent on September 15, 1959. The Board's decision and order (R. 47–51)[2] are reported at 124 NLRB No. 117. This Court has jurisdiction of the proceeding under Section 10(e) of the Act, the unfair labor practices having occurred within this

[1] The relevant provisions of the Act are printed in the Appendix, *infra*, pp. 28–30.

[2] Reference to portions of the printed record are designated "R." Wherever a semicolon appears, the references preceding it are to the Board's findings; those following are to the supporting evidence.

judicial circuit at Los Angeles, California, where respondent is engaged in commercial printing for financial firms (R. 15–16; 8, 12).

STATEMENT OF THE CASE

Briefly, the Board found that respondent violated Section 8(a) (5) and (1) of the Act by refusing to execute a collective bargaining agreement which had been negotiated on its behalf by the employers' association to which it belonged and through which it participated in a multi-employer bargaining relationship with the representative of its employees. The evidentiary facts upon which this finding rest may be summarized as follows:[3]

I. The Board's findings of fact

A. The multi-employer bargaining relationship respecting commercial printing firms in Los Angeles, and respondent's participation therein

For many years collective bargaining between lithographic employees and the majority of commercial printing companies in Los Angeles, has been conducted on a multi-employer basis (R. 16; 75). The employees have been represented by Amalgamated Lithographers of America, Local 22, AFL–CIO, hereafter called the Union, and the printing companies have been represented by the Union Em-

[3] The proceeding against respondent was consolidated before the Board with another case involving a different employer, Anderson Lithograph Company, but substantially the same factual background. Accordingly, the Trial Examiner's Intermediate Report and the Board's Decision and Order treat both cases together. Anderson Lithograph Company has complied with the Board's order, with the consequence that the instant proceeding is restricted to that part of the Decision and Order relating only to respondent.

ployers' Section of the Printing Industries Association, hereafter called the Association (R. 16; 64, 75). Members of the Association are signatory to authorization forms which provide that the Association, through a negotiating committee selected by its membership, shall act as the representative of all members in bargaining matters and that any agreement reached by it with the Union shall be "binding upon each [member] Company" if ratified by a majority of the members.[4]

In the fall of 1957, in accordance with past practice, the Union notified the Association, and the 46 companies it then represented, that it wished to begin negotiations for a new contract to succeed the existing agreement which was to expire in February, 1958

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[4] In relevant part the authorization form reads as follows (R. 61, 160):

"The undersigned ________________ authorizes the [Association] to act as its collective bargaining agent in negotiating with the [Union] a tentative agreement covering wages, hours and other conditions of employment.

"If the Association reaches such tentative agreement, it shall be referred to a meeting of those companies signing this authorization, and in the event a majority of said companies attending this meeting ratify its terms, the Association shall then execute a formal contract with the Union binding upon each Company signing this authorization.

"It is further agreed by the undersigned ________________ that it will refrain from entering into any individual negotiation, contract, or understanding with the Union, and that it will comport itself in a manner consistent with preserving Association unity.

*   *   *   *   *

"This authorization may be revoked after the execution of a contract between the Association and the Union by submission of written notice to [Association]. * * *"

(R. 17; 73, 133–134). At this time respondent, which had been a member of the Association in 1951, was not affiliated with the Association and dealt with the Union separately (R. 18; 72–73, 114). Respondent's contract with the Union, like that of the Association, was to expire in February, 1958, and respondent accordingly carried on separate negotiations with the Union during the winter of 1957–1958 concurrently with those between the Union and the Association (R. 18; 72–73).

Neither set of negotiations produced agreement before the termination of the existing contracts (R. 17–18; 98–100, 135). The principal unresolved issues between respondent and the Union related to a union security provision and the application to lithographic employees of a profit-sharing plan enjoyed by some of respondent's employees (R. 73, 98–99, 114–115). On March 14, 1958, respondent decided to abandon separate negotiations with the Union, and to participate in the bargaining conducted by the Association. Accordingly, on that date it notified both the Association and the Union that "Jefferies Banknote Company has designated the [Association] as its collective bargaining representative and will henceforth be represented in any negotiations by them" (R. 17; 116, see also 164–165). Separate negotiations between respondent and the Union thereafter ceased, and it was understood by all parties that the Association spoke for respondent as well as its other members in conducting subsequent negotiations with the Union (R. 18; 71–72, 116–117).

B. The Association and the Union reach agreement on the terms of a new collective bargaining contract

On March 20, 1958, about a week after respondent had authorized the Union to represent it in bargaining matters, the Union called a strike against all Association members, including respondent, in support of its bargaining position (R. 19; 66, 79–80). Substantially all of the employees represented by the Union joined in the strike (R. 19). During the first week of the strike several of the Association members, without informing the Association, concluded separate agreements with the Union (R. 19–20; 80–83). Upon learning of this development, an emergency meeting of the Association's negotiating committee was called for March 26, 1958, and it was there decided that a full membership meeting should be held the following day (R. 19–20; 136–138).

At the membership meeting on March 27 the negotiating committee reported the defections among the Association's membership, and the terms of the individual agreements which had been executed (R. 20; 138–139). The committee's spokesman then stated that it was the committee's recommendation that in view of the separate contracts which had been signed, "it would be inadvisable to continue the strike" (R. 20; 139). The membership was asked to "ratify in advance" a settlement offer containing the same terms as those embodied in the separate contracts, but the committee's spokesman also stated that any member which wished to withdraw from the Association rather than be bound by its contract position could do so by signing a form provided for that purpose (R. 20–21;

128, 132, 139, 140). The membership then adopted by a majority vote the committee's recommendation, but two of the member companies signed the revocation forms (R. 20–21; 132, 139, 140).

Respondent did not withdraw from the Association at the March 27 meeting, but its representative told the negotiating committee after the meeting had ended that it would "go along" with the proposed contract if it did not contain a profit sharing plan (R. 21; 125–126, 140–141, 148–149). Such a plan was included in the proposed agreement which had been described to the meeting and recommended by the negotiating committee, and which had been accepted by the vote of the membership of the Association (R. 167).[5]

Immediately following the Association meeting of March 27, the negotiating committee met with Union representatives. In a preliminary conversation the committee advised the Union president, Theodore Brandt, of respondent's position, as stated to the committee, respecting the profit-sharing proposal, but Brandt declined to acquiesce in any effort by respondent to escape the binding effect on it of any agreement reached between the Association and the

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[5] The plan, as proposed by the Union, provided that any employer having a profit sharing arrangement covering factory employees would "permit but not compel any member of the bargaining unit, who desires, to participate in the said plan" (R. 18; 167). The Union first added this plan to its contract proposals submitted to the Association after respondent had designated the Association to represent it on March 14, 1958 (R. 18; 64–65, 79). The Union had proposed, in its earlier separate negotiations with respondent, that the profit-sharing plan then in effect at respondent's plant be extended to cover the lithographic employees (*supra*, p. 4).

Union (R. 21–22; 142, 74, 108, 155).[6] The committee then offered to enter into a contract upon the terms its members had just ratified, including the profit-sharing provision, and the Union accepted (R. 21–22; 87–88, 141, 167). The Union membership ratified the agreement the same afternoon (R. 88, 142).

C. Respondent's refusal to execute the contract negotiated by the Association and the Union

On April 1, 1958, Brandt spoke with respondent's president Allerton Jeffries, about returning the striking employees to their jobs. Jeffries stated that he would agree to take the employees back as work became available at the new wage rate negotiated by the Association, but suggested that a complete contract be negotiated between the Union and respondent (R. 23–24; 90–91, 102–103, 120). Brandt answered that the relationship between respondent and the Union was complicated, and that he wished to consult with the Union's attorney (*ibid.*). On April 2, in a letter to the Union, respondent restated its position as to the recalling of the striking employees and negotiating a new contract (R. 24; 170–171). In answer, the Union wrote respondent as follows (R. 24–25; 172–173):

[6] Brandt's response when told that respondent wished to qualify its representation by the Association was the subject of radically differing testimony at the hearing, ranging from testimony that Brandt stated the matter would be taken up in individual negotiations with respondent (R. 151–152, 157), to testimony that Brandt remained silent (R. 142), to testimony that Brandt stated respondent would be bound by any agreement made by the Association (R. 74, 108, 155). The Trial Examiner concluded that "Brandt made no statement at this meeting reasonably construed as acquiesence in Jeffries' revocation of (Association) authority" (R. 22).

> We are, of course, expecting that the wage increases will be instituted in your plant as of February 15, 1958, in accordance with the negotiations just concluded.
>
> I am puzzled by your statement that you wish to start negotiations with Local 22.
>
> During negotiations with the Printing Industries Association, on behalf of the Lithographic Employers in Los Angeles, you advised Local 22, in writing, that the Association was bargaining for you as well as on behalf of the various other employers.
>
> Accordingly, we must proceed on the assumption that there is no need for further negotiations, and that we may expect from you a signed contract in accordance with the terms agreed upon in the general negotiations.

No further negotiations were conducted between the Union and respondent, as far as the record shows. In due course, the Association members which had accepted the contract executed individual copies thereof circulated by the Union (R. 23; 71, 91). Respondent, however, refused to execute the copy of the contract furnished it (R. 23; 71).

II. The Board's conclusions and order

Upon the foregoing facts, the Board concluded that respondent had authorized the Association to negotitiate an agreement with the Union on its behalf, and had not unconditionally withdrawn from the multiemployer bargaining relationship at the time that agreement was reached between the Association and the Union. In these circumstances, the Board found that respondent was precluded by the good faith bar-

gaining requirements of the Act from rejecting the "agreement made by the multi-employer group with which [it] was then affiliated," and that its action in this respect constituted a violation of Section 8(a) (5) and (1) of the Act. The Board further noted that, in view of these findings, it was unnecessary to decide whether an unconditional withdrawal from multi-employer bargaining would in any event, in the circumstances of this case, be permitted under the bargaining provisions of the Act (R. 48–49).

The Board's order requires respondent to cease and desist from refusing to execute the agreement negotiated by the Association and the Union in this case, or from in any like or related manner interfering with the rights of its employees to bargain collectively through the representative of their choice. Affirmatively, the Board's order requires respondent to execute the collective bargaining agreement reached between the Association and the Union and to post appropriate notices (R. 49–51).

SUMMARY OF ARGUMENT

The good faith bargaining provisions of the Act expressly require an employer to execute a collective bargaining contract entered into on his behalf by an agent authorized to represent him in bargaining matters. The present case involves the application of this settled principle to a situation where the employer's authorized bargaining agent was a multi-employer bargaining association. In such a situation it is particularly important that all members be required to execute a contract negotiated on their be-

half, for the effectiveness of the group bargaining technique depends on the uniform coverage of the contract within the bargaining unit.

It is plain from the record that respondent originally authorized the Association to reach binding agreements on its behalf, and that the Association did reach such an agreement, which respondent refused to execute. Respondent urged before the Board, however, that it effectively qualified the Association's authority to represent it and was thereby released from commitments contrary to such qualifications thereafter made by the Association on behalf of its members. In addition respondent contended that the defections on the part of some Association members in signing individual contracts with the Union terminated the Association's authority to represent any member; and that, in any event, the Union acquiesced in respondent's refusal to be party to the Association contract. None of these contentions is meritorious.

1. Respondent did not attempt to withdraw completely from the Association, but instead attempted to qualify substantively the authority of the Association to make a particular concession. The Association, however, was organized to operate by majority rule, and its procedures did not permit such individual limitations where, as here, the majority of the members had approved of the contract proposal in question. Moreover, respondent's attempt to qualify the Association's authority to bargain on its behalf directly conflicts with the Board's established rule that "the intention by a party to withdraw [from a multi-

employer bargaining unit] must be unequivocal * * *" *Retail Associates, Inc.,* 120 NLRB 388, 393. The basic consideration underlying this limitation upon the independent action allowed to an employer participating in group bargaining is that deference must be given to the larger statutory interest in promoting industrial stability in multi-employer bargaining relationships. The central feature of multi-employer bargaining is the standardization of contract terms, plainly a consequence of a uniform bargaining position on the part of the employer members. If each of the 47 members of the Association involved here could separately qualify its authorization as respondent attempted, the resulting non-uniformity would be the antithesis of multi-employer bargaining; the result "would render the general and widely-recognized practice of multi-employer bargaining virtually valueless" (R. 48). Accordingly, the Board's decision here, in giving effect to rules without which multi-employer bargaining could not function, reflects a reasonable "balancing of the conflicting interests" involved in multi-employer bargaining, a responsibility which in this area of "national labor policy * * * Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *N.L.R.B.* v. *Truck Drivers Local 449,* 353 U.S. 87, 96.

2. Respondent's contention that the Association's authority as representative for its members was automatically nullified when several of the members signed individual contracts during the strike is not supported

by the facts. Both before and after such defections in the Association membership, the Association continued to speak for the bargaining unit, as contemplated by all parties involved. Further, the notion that a multi-employer bargaining relationship is subject to dissolution at any point in negotiations by the independent actions of a small group of employers within the unit is contrary to the relevant principles of good faith bargaining in a multi-employer unit, as stated above.

There is no need to consider whether there was any impropriety on the part of the Union and the Association members which executed separate agreements. The issue here is not what rights respondent may have *vis a vis* the Union and these employers, but whether respondent had effectively removed itself from the multi-employer unit—an issue which must be resolved, as shown, against respondent's position.

3. Respondent's final contention before the Board was that the Union agreed that respondent should not be bound by the March 27 agreement. The contention, however, rests simply on a credibility resolution by the Trial Examiner, which in the circumstances of this case is not subject to reversal on judicial review.

ARGUMENT

The Board properly determined that respondent violated Section 8(a) (5) and (1) of the Act by refusing to execute the collective bargaining contract negotiated by the Association for its members

A. Introduction—the issues defined

The controlling legal principle upon which the Board's decision rests is that the good faith bargain-

ing provisions of the Act require an employer to execute a collective bargaining contract entered into on his behalf by a multi-employer association which is authorized to represent him in bargaining matters. This principle derives directly from the language of the statute. Thus, Section 8(d) of the Act explicitly defines the statutory duty "to bargain collectively" to include "the execution of a written contract incorporating any agreement reached if requested by either party." See also *Heinz Co.* v. *N.L.R.B.*, 311 U.S. 514, 526. That the same requirement is applicable in situations where, as here, agreement with a union has been reached by an authorized representative of an employer, acting on his behalf, is settled by this Court's decisions in *N.L.R.B.* v. *Shannon & Simpson Casket Co.,* 208 F. 2d 545, 548, and *N.L.R.B.* v. *Nesen,* 211 F. 2d 559, 563–564, certiorari denied, 348 U.S. 820. See also, *N.L.R.B.* v. *Gittlin Bag Co.,* 196 F. 2d 158, 159 (C.A. 4). Indeed, it is particularly important that the statutory requirement respecting the execution of written agreements be enforced with respect to members of a multi-employer bargaining unit. Bargaining in this situation affects large numbers of employers and their employees, and the effectiveness of this basis for bargaining, which, as the Supreme Court has noted, has been considered "a vital factor in the effectuation of the national policy of promoting labor peace through strengthened collective bargaining," depends in large measure upon adherence by all employers involved to collective agreements concluded at the group level. *N.L.R.B.* v. *Truck Drivers Local*

449, 353 U.S. 87, 95. See the discussion at pp. 17–22, *infra.*

In the present case it is not open to dispute that respondent, when it joined the Association on March 14, 1958, vested full authority in the Association to represent it in bargaining with the Union, and to reach a binding agreement on its behalf. Respondent formally notified the Union that it would "henceforth be represented in any negotiations by [the Association]," and separate negotiations between respondent and the Union were at once discontinued (*supra,* p. 4). Similarly, it cannot be questioned that the Association reached full agreement, ratified by a majority of the Association's members, in its negotiations with the Union on March 27, 1959 (*supra,* pp. 5–7).[7]

From the foregoing it is plain that respondent's statutory obligation to bargain in good faith with the Union required it to execute the contract of March 27 if respondent was at that time a member of the Association, and thus within the multi-employer bargaining unit. Respondent contended before the Board, however, that the Association was no longer in a position on March 27 to bind it to the agreement which it reached with the Union on that date. The contention is based primarily on respondent's state-

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[7] The Association's usual practice, as reflected by the standard authorization form signed by its members, was to obtain ratification of its members after reaching agreement with the Union (*supra*, p. 3, n. 4). Since the Association obtained advance approval of the precise terms of the agreement reached in this case, the agreement of course became effective and binding on the Union and all Association members as soon as it was concluded.

ment to the Association's negotiating committee at the March 27 membership meeting that respondent would "go along" with the proposed contract only if it did not contain a profit-sharing provision (*supra*, p. 6). Accordingly, the question presented on this phase of the case is whether respondent's attempt to qualify the Association's authority to represent it was effective so as to release respondent from commitments thereafter made by the Association on behalf of its members. Two additional contentions were also advanced before the Board by respondent in support of its position that it was not subject to the March 27 agreement. Thus, respondent argued that the defections on the part of some Association members in signing individual contracts with the Union had the effect of dissolving the Association and terminating its authority to represent any of the members, including respondent. Finally, it was argued before the Board that even if the Association was authorized to represent respondent, the Union had acquiesced in respondent's refusal to be party to the Association contract, thereby releasing respondent from its coverage.

We deal with each of these contentions below.

B. Respondent was a member of the multi-employer bargaining unit when the March 27 agreement was reached, and was therefore bound by the agreement

1. *Respondent's attempt to qualify the Association's authority to represent it was ineffective*

When respondent notified the Association's negotiating committee on March 27, that it did not approve of the Union's profit-sharing proposal, it knew that a number of the Association's members had signed indi-

vidual contracts embodying such a provision, and that the same provision had been expressly approved by a majority vote of the membership (*supra,* pp. 5–6). In addition, the spokesman for the negotiating committee had announced that any members wishing to revoke the Association's authority to represent them could do so by signing a form provided for that purpose (*supra,* p. 5). Respondent, however, did not withdraw from the Association, as did some of the other members when the foregoing announcement was made, nor did it in any way indicate to the negotiating committee that the Association could not speak for it in negotiating an agreement with the Union. Instead, respondent attempted to qualify substantively the authority of the Association to make a particular concession insofar as its applicability to respondent was concerned. Accordingly, the question on this phase of the case is not whether an employer may completely withdraw from a multi-employer bargaining unit during bargaining negotiations. Rather, the question is whether an employer who remains in the bargaining unit and continues to authorize the employer association to speak for it may escape the application to it of an agreement thereafter made by the Association which contains a provision which the employer has specially disapproved but which was expressly adopted by a majority of the members of the Association.

It is clear that nothing in the arrangement between the Association and its members affords respondent the kind of immunity it seeks. The standard authorization form used by Association members provides that the Association, upon ratification by a majority

of its members of its agreement with the Union, "shall * * * execute a formal contract with the Union binding upon each Company * * *" (R. 61; 160). In like vein, the Association represented to the Union at the outset of contract negotiations that the negotiating committee was authorized "at the conclusion of negotiations to execute in the name of the [Association] a collective bargaining agreement binding upon each and every firm it represents" (R. 169–170). The only provision for revocation by members of their authorizations to the Association called for "submission of written notice * * * after the execution of a contract" (R. 160). Thus, insofar as the relationship between respondent and the Association is concerned, respondent's failure to withdraw completely from the Association left the latter free to negotiate an agreement binding upon respondent, even though respondent had expressed its opposition, as a minority member of the Association, to one of the proposed provisions of the contract with the Union.

As respondent has failed to establish its right under Association procedures to restrict specially the authority of the Association to negotiate on its behalf, it can prevail only if the Act in some way protects the right to a limited participation by an employer in multi-employer bargaining. The Act itself does not expressly deal with problems relating to multi-employer bargaining. The bargaining provisions of the Act nonetheless contemplate freedom by employers and unions to make full use of this kind of bargaining relationship. Thus, noting the widespread prac-

tice of bargaining through employer associations, the Supreme Court has explained (*N.L.R.B.* v. *Truck Drivers Local 449,* 353 U.S. 87, 95–96):

> The inaction of Congress with respect to multi-employer bargaining cannot be said to indicate an intention to leave the resolution of this problem to future legislation. Rather, the compelling conclusion is that Congress intended "that the Board should continue its established administrative practice of certifying multi-employer units, and intended to leave to the Board's specialized judgment the inevitable questions concerning multi-employer bargaining bound to arise in the future".[26]
>
> [26] 231 F. 2d at 121 (dissenting opinion).

See also *Davis Furniture Co.* v. *N.L.R.B.,* 197 F. 2d 435, 438 (C.A. 9).

In the performance of its obligation thus to exercise its "specialized judgment" in formulating the rules which govern withdrawal from multi-employer bargaining, the Board has attempted, as the touchstone of decision, to foster the stable and responsible industrial relationship which is the purpose of such bargaining. As stated by the Board in *Retail Associates,* 120 NLRB 388, 393:

> The right of withdrawal by either a union or employer from a multi-employer unit has never been held, for Board purposes, to be free and uninhibited, or exercisable at will or whim. For the Board to tolerate such inconstancy and uncertainty in the scope of collective-bargaining units would be to neglect its function in delineating appropriate units under Section 9, and to ignore the fundamental purpose of the

> Act of fostering and maintaining stability in bargaining relationships. Necessarily under the Act, multi-employer bargaining units can be accorded the sanction of the Board only insofar as they rest in principle on a relatively stable foundation.[8]

The same principles apply in determining whether an employer, although not unequivocally withdrawing from multi-employer bargaining, may condition further representation by the employer Association upon the adoption of specified substantive contract terms. That is, the extent of independent action which is allowed to an employer who participates in group bargaining is governed by the larger statutory interest in promoting industrial stability in multi-employer bargaining relationships.

The central feature of multi-employer bargaining is the standardization of contract terms for the employers within the bargaining unit—the consequence of a uniform bargaining position on the part

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[8] The Board further indicated in the *Retail Associates* decision, in accordance with the principles stated in the text, that absent unusual circumstances, it would not permit abandonment of a multi-employer unit by an employer "Where actual bargaining negotiations based on the existing multi-employer unit have begun." 120 NLRB at 395. Accordingly, even if respondent in the present case had fully withdrawn from the bargaining unit, it would appear that its action would not have been effective insofar as the Act is concerned, at least absent "unusual circumstances." As stated *supra*, p. 9, the Board noted that it was not necessary to pass on the question of whether such justifying circumstances were present in this case, since respondent did not purport to revoke completely the Association's authority to speak for it in negotiations with the Union. If the Court should view respondent's action in this case as an attempt to remove itself altogether from the bargaining unit, it would appear appropriate to remand the case to the Board on consideration of this undecided question.

of the employers involved. See *N.L.R.B.* v. *Truck Drivers Local 449,* 353 U.S. 87, 94–96. Such standardization has promoted industrial stability; strikes have tended to be infrequent in multi-employer units.[9] It is at once apparent, however, that uniformity of contractual terms is impossible if the bargaining authority of the employers' representative may be qualified by individual employers in the unit. If respondent could qualify its representation by the Association in this case upon elimination of the profit sharing proposal, so might the other 46 employer members of the Association qualify their representation upon adoption or rejection of other substantive matters. The resulting nonuniformity of employer position is the antithesis of multi-employer bargaining, and would defeat its underlying purpose of standardizing contract terms within the unit. As stated by the Board, to reserve such freedom of individual action "would render the general and widely-recognized practice of multi-employer bargaining virtually valueless" (R. 48).

In short, multi-employer bargaining can only be meaningful, and thereby function as contemplated by

[9] Monthly Labor Review, vol. 64, p. 397 (Bureau of Labor Statistics, 1947); Zorn, Multi-Plant and Multi-Employer Bargaining (Sixth Annual Conference on Labor, N.Y.U., 1953), p. 385, 401; *Causes of Industrial Peace, Final Report* (National Planning Association, 1953), pp. 11, 18; Kerr and Fisher, *Multiple Employer Bargaining: The San Francisco Experience* (Institute of Industrial Relations, Univ. of Calif., 1948), p. 53; Kerr and Randall, *Multiple Employer Bargaining in the Pacific Coast Pulp and Paper Industry* (Institute of Industrial Relations, Univ. of Pa., 1948), pp. 27–31; Witte, *Economic Aspects of Industry-Wide Collective Bargaining* (Department of American Studies, Amherst College, 1950), pp. 50–51.

the bargaining provisions of the Act, where the employer members are bound by the agreement concluded on their behalf by their representative. Good faith bargaining requires no less. No purpose can be served by negotiations on a multi-employer basis if employers may renege at the conclusion of bargaining because of some private qualification placed on the authority of their representative. The statutory "process [which looks] to the ordering of the parties' industrial relationship through the formation of a contract" is not furthered by permitting employers, as exemplified by respondent's conduct in this case, to slip from individual bargaining to group bargaining and back again, as it suits their interests, depending on whether one or the other methods is more likely to result in the particular contract terms they desire. *N.L.R.B.* v. *Insurance Agents' Union,* 361 U.S. 477, 485. It is true, of course, that group bargaining as viewed by the Board involves application of the principle of majority rule, even though individual employers may thereby become parties to contractual terms of which they did not approve. Multi-employer bargaining, however, cannot be carried on within the intendment of the Act unless majority rule is operative. As stated above, if a minority of employers within the unit are free to reject contract provisions approved by a majority, uniformity of contract terms is destroyed, and the essential purpose of group bargaining is thereby nullified. The conflict between private and group interest may properly be resolved in favor of "preservation of the integrity of the multi-employer

bargaining unit" in the situation presented by the instant case, just as the analogous conflict between the interests in striking and group bargaining was similarly resolved in *N.L.R.B.* v. *Truck Drivers, Local 449,* 353 U.S. 87, 93.

From the foregoing, it is apparent that as a minimum multi-employer bargaining presupposes an identified unit in which the ultimate agreement will be uniformly applicable. Accordingly, "the Board has repeatedly held over the years that the intention by a party to withdraw [from a multi-employer bargaining unit] must be unequivocal * * *" *Retail Associates, Inc.,* 120 NLRB 388, 393. So long as the employer group is authorized to speak for an employer in bargaining matters, as was the situation respecting the Association and respondent in the present case, the employer cannot escape the binding effect of the agreement thereafter reached. These basic precepts reflect a fully reasonable "balancing of the conflicting legitimate interests" involved in multi-employer bargaining, a function which in this area of "national labor policy * * * Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *N.L.R.B.* v. *Truck Drivers Local 449,* 353 U.S. 87, 96. Applying the foregoing principles to this case, it is plain that respondent's effort to qualify the authority of the Association to represent it was ineffective, and that respondent, like all other employers in the bargaining unit for which the Association spoke, was required by the Act to execute the contract negotiated between the Association and the Union.

2. The defections by some Association members in signing individual contracts did not dissolve the Association and thereby abrogate its authority to conclude an agreement covering the bargaining unit

Respondent contended before the Board that, whether or not it could properly qualify the Association's authority to bargain for it, the Association's authority in this respect was automatically nullified when several of the Association members signed individual contracts during the strike. Respondent reasons that the authorization of each member to the Association was impliedly conditioned upon the continued adherence of every other member to the group bargaining principle, and that the breach of this obligation by some of the members had the effect of terminating all bargaining authority of the Association.

Neither the arrangement between the Association and its members or their conduct afford the slightest support for respondent's attenuated theory. The authorization forms signed by the Association members provided for only one method of releasing members from group actions—by written revocation. Even in the event of such a revocation moreover, the authorization forms do not suggest that the result would be a dissolution of the Association, or a nullification of its capacity to represent the remaining members. There is no apparent reason for treating an unauthorized defection from the Association differently. Certainly no such extreme consequence was contemplated by the parties. The Association itself protested to the Union when it learned of individual negotiations between the Union and Association members, and strongly asserted its continuing and exclusive authority to repre-

sent all such members (R. 162–163). Moreover, there is no indication that any of the employers involved thought that the independent actions by some of their fellow members in any way lessened the Association's authority as their representative. Indeed, on March 27 when Association members were given an opportunity to withdraw altogether from multi-employer negotiations, only a very few followed this course, and as shown, respondent was not one of them (*supra*, pp. 5–6).

Respondent argued before the Board that the Association actually was in a state of dissolution on March 27, and the meeting of that day had the effect of reconstituting it as the representative of only those employers who granted it full authority to speak for them. But this view cannot be reconciled with the Association's continuing representation of Association members without hiatus and without protest by the members both before and after March 27. In short, neither the Association nor its members, nor the formal arrangement between them, envisaged the structure of the Association as having the ephemeral nature attributed to it by respondent. Since the Association continued throughout the events in this case to speak for the entire bargaining unit, the only question presented by its exercise of representative authority is whether an individual member could impose private restrictions on the extent of such authority. As shown above, that question must be answered in the negative.

It may be added, moreover, that respondent's notion that a multi-employer bargaining relationship is

subject to dissolution at any point in negotiations by the independent actions of a small group of employers within the unit is contrary to the statutory principles of good faith bargaining in a multi-employer unit, as discussed above, pp. 17–22. There is no more reason for concluding that a small minority of employers in a multi-employer unit may destroy the stabilizing effect of group bargaining by signing separate agreements with a union than for concluding that they may do so by imposing private qualifications upon the authority of the representative. Cf. *Retail Associates, Inc.,* 120 NLRB 388, 393, n. 8. In either case, as we have shown, the procedure of group bargaining as contemplated by the Act requires the continuing existence of group authority to bind all employers within the bargaining unit.

In view of the foregoing, there is no need to consider whether there was any impropriety on the part of the Union and the Association members which executed separate agreements. Compare *Morand Bros.* v. *N.L.R.B.,* 190 F. 2d 576, 581 (C.A. 7), with *Elliot* v. *Sheet Metal Workers,* 42 LRRM 2100 (D.C., New Mex.). Whatever rights either the Association or its members may have *vis a vis* the Union and the employers which signed separate contracts, we have shown the multi-employer bargaining relationship continued in existence, and the Association continued to represent its members in negotiations with the Union. Since respondent did not effectively remove itself at any relevant time from the bargaining unit, it follows that it was bound, along with the other employers in the unit, by the results of the negotiations.

3. *The Union did not acquiesce in respondent's refusal to be a party to the contract with the Association*

Respondent's factual contention before the Board that the Union had indicated its agreement that the March 27 contract should not apply to respondent requires only brief consideration. The argument is based upon testimony to the effect that Union President Brandt, upon being informed on March 27 of respondent's position respecting the profit sharing proposal, acquiesced in respondent's attempt to remove itself from the coverage of any contract containing such a provision. As shown *supra,* p. 7, n. 6, the Trial Examiner, weighing this testimony against sharply differing accounts of Brandt's statements on March 27, concluded that "Brandt made no statement at this meeting reasonably construed as acquiescence in Jeffries' revocation of [Association] authority" (R. 22). Resolution by the Trial Examiner, whose findings were adopted by the Board, of this question of conflicting testimony may not be overturned on judicial review. See, e.g., *N.L.R.B.* v. *Radcliff,* 211 F. 2d 309, 315 (C.A. 9), certiorari denied, 348 U.S. 833; *N.L.R.B.* v. *West Coast Casket Co.,* 205 F. 2d 902, 906 (C.A. 9); *N.L.R.B.* v. *State Center Warehouse,* 193 F. 2d 156, 157 (C.A. 9).

Moreover, when Brandt talked with respondent's president on April 1, he indicated that the application of the contract to respondent was to be the subject of discussion with the Union's attorney before any final position was to be taken by the Union (*supra,* p. 7). And when the Union finally stated its position on the matter, it made explicit that it

considered respondent bound by the contract with the Association, and requested that respondent execute a copy thereof (*supra*, p. 8). In these circumstances, there is no basis for the contention that an understanding had been reached by respondent and the Union that respondent was not subject to the March 27 contract.

CONCLUSION

For the reasons stated, a decree should be entered enforcing in full the Board's order directed against respondent.

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APRIL, 1960.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, * * *

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if re-

quested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. * * *

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

"(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in

the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *"

U.S. GOVERNMENT PRINTING OFFICE: 1960